

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.316 First degree murder; penalty; definitions.

Sec. 316. (1) A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life:

(a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

(b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, or vulnerable adult abuse in the first and second degree under section 145n.

(c) A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that the peace officer or corrections officer is a peace officer or corrections officer engaged in the performance of his or her duty as a peace officer or corrections officer.

(2) As used in this section:

(a) "Arson" means a felony violation of chapter X.

(b) "Corrections officer" means any of the following:

(i) A prison or jail guard or other prison or jail personnel.

(ii) Any of the personnel of a boot camp, special alternative incarceration unit, or other minimum security correctional facility.

(iii) A parole or probation officer.

(c) "Major controlled substance offense" means any of the following:

(i) A violation of section 7401(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401.

(ii) A violation of section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7403.

(iii) A conspiracy to commit an offense listed in subparagraph (i) or (ii).

(d) "Peace officer" means any of the following:

(i) A police or conservation officer of this state or a political subdivision of this state.

(ii) A police or conservation officer of the United States.

(iii) A police or conservation officer of another state or a political subdivision of another state.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.316;—Am. 1969, Act 331, Eff. Mar. 20, 1970;—Am. 1980, Act 28, Imd. Eff. Mar. 7, 1980;—Am. 1994, Act 267, Eff. Oct. 1, 1994;—Am. 1996, Act 20, Eff. Apr. 1, 1996;—Am. 1996, Act 21, Eff. Apr. 1, 1996;—Am. 1999, Act 189, Eff. Apr. 1, 2000;—Am. 2004, Act 58, Eff. June 11, 2004.

Constitutionality: This section, which provides a mandatory life sentence for first degree murder, does not violate constitutional guarantees of due process and equal protection or the guarantee against cruel and unusual punishment. *People v. Hall*, 396 Mich. 650, 242 N.W.2d 377 (1976).

The use of common-law definition of rape in this section, until it was amended by Act No. 28 of the Public Acts of 1980, does not violate the equal protection clause. *People v. McDonald*, 409 Mich. 110, 293 N.W.2d 588 (1980).

In *People v. Gay*, 407 Mich. 681, 289 N.W.2d 651 (1980), the Michigan supreme court held that the prosecution of defendants under this section subsequent to their convictions in federal court for the same acts is limited by the double jeopardy clause of the Michigan constitution.

In *People v. Wilder*, 411 Mich. 328, 308 N.W.2d 112 (1981), the Michigan supreme court held that conviction and sentence for both first-degree felony murder and the underlying felony of armed robbery violates the state constitutional prohibition against double jeopardy.

A mandatory life sentence imposed for conspiracy to commit first-degree, even if nonparolable, is not so excessive as to constitute cruel and unusual punishment; nor does it violate the Equal Protection Clauses of the Michigan and United States Constitutions. *People v. Fernandez*, 427 Mich. 321, 398 N.W.2d 311 (1986).

Former law: See section 1 of Ch. 153 of R.S. 1846, being CL 1857, § 5711; CL 1871, § 7510; How., § 9075; CL 1897, § 11470; CL 1915, § 15192; and CL 1929, § 16708.